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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,857	01/08/2002	Giovanni Benini	449122020100	6367

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MORRISON & FOERSTER LLP  
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MCLEAN, VA 22102

EXAMINER

TAYLOR, BARRY W

ART UNIT	PAPER NUMBER
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2643

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/038,857

Applicant(s)

BENINI ET AL.

Examiner

Barry W. Taylor

Art Unit

2643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The Examiner's previous Office Action made final on (7/29/05) is vacated.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leleu (6,088,687) in view of Corwith (6,259,778).

Regarding claims 1 and 11-14. Leleu teaches a charge metering method and system for data transmission, comprising a centralized and decentralized network resources (see at least col. 7 lines 4-6):

storing at least one electronic credit which includes a statement on the amount of use of transmission units of a data transmission network on two terminals operated on the data transmission network (abstract, columns 2-3, see columns 3-4 wherein "nodes" or "routers" used to store electronic credit (i.e. toll token), see col. 7 line 61 – col. 8 line 67 wherein toll token used at any time and at any node (i.e. packet-origination and packet-termination nodes) to authorize an electronic system to perform an operation;

controlling the use of data transmission units of the data network by two control units (col. 1 line 65 – col. 3 line 17, see columns 3-4 and 7-8 wherein two nodes used (i.e. origination and termination nodes), col. 7 lines 4-6, col. 7 line 61 – col. 8 line 65, col. 9 lines 5-64, col. 8 line 65 – col. 10 line 61);

transmitting the electronic credit for use of the data transmission path to an assigned control unit (see figure 2 wherein calling node 200 transmits toll token to be used for datagram sent from calling node 200 to receiving node 201); and

reserving the transmission units of the data transmission network to use the data transmission path based on the credit received (see figure 2 wherein path taken by datagram is the arc 200, 210, 230, 231, 233, 234, 235, 220 and 201 whereby token is inserted into datagram allowing for transmission of data contained in packet to be processed by each node as it travels through network (col. 1 line 65 – col. 3 line 17, see columns 3-4 and 7-8 wherein two nodes used (i.e. origination and termination nodes), col. 7 lines 4-6, col. 7 line 61 – col. 8 line 65, col. 9 lines 5-64, col. 8 line 65 – col. 10 line 61).

According to Applicant's newly amended claims and remarks (see remarks on page 6, paper dated 9/7/2004 and amendments to independent claims; see newly amended claims and remarks on page 6, paper dated 5/24/05), wherein Applicants contend that Leleu fails to teach telephone network.

Corwith teaches a method and apparatus for detecting modem tones for implementation of a different billing structure (Title, abstract). Corwith allows telecommunications company the ability to charge different rate for modem calls than local calls (col. 1 lines 13-64). Corwith uses voice/modem detector (item 24 figure 1) and a bit transfer detector (26 figure 1) enabling telephone company the ability to implement a variety of billing schemes (col. 2 lines 11-17, col. 2 line 38 – col. 4 line 5). Corwith further discloses (col. 2 lines 11-17, col. 3 lines 1-22, col. 3 lines 52-55) routing voice calls to PSTN and modem calls to Internet service provider's Point Of Presence (a.k.a. POP).

Therefore, it would have been obvious for any one of ordinary skill in the art at the time of invention to modify the invention as taught by Leleu to use voice/modem detector and bit transfer detector as taught by Corwith providing for a more flexible system that allows telephone companies the ability to implement a variety of billing schemes for modem calls that are different from local calls.

Regarding claim 2. Leleu teaches sending toll token from one node to another node (see figure 2, col. 3 lines 58-62).

Regarding claim 3. Leleu teaches sending credit is the terminal beginning the data transmission (see figure 2 wherein sending terminal 200 is the terminal beginning data transmission).

Regarding claim 4. Leleu teaches the token is issued with regards with transmission path which is to be set up or has been set up (col. 2 lines 49-57, col. 7 lines 4-67, col. 8 lines 21-27, col. 8 line 26 – col. 17 line 37).

Regarding claim 5. Leleu teaches token includes at least identification of terminal beginning the data transmission (see col. 2 line 52 wherein token at least includes function of the destination address (i.e. identification of other terminal), see col. 4 wherein token includes information relating to the user (i.e. terminal beginning the data transmission), see col. 6 lines 36-40 wherein datagram supports different protocols, Leleu even using an id to identify the creator of the token---see column 9, Leleu even offers tokens of different denominations for different service grades and types of operators which obviously require checking by the nodes)).

Regarding claim 6. Leleu teaches period of validity or a data of validity is fixed (see bottom of column 8) and the period of validity is at least one less than approximately five minutes (see top of column 9 wherein the time period which may not, in general, exceed several seconds which is obviously less than approximately five minutes).

Regarding claims 7-8. Leleu teaches cryptographic method (see cryptography starting on column 11 and continuing to column 15).

Regarding claim 9. Leleu teaches data network operating in accordance with Internet Protocol (col. 6 lines 36-39, col. 15 lines 26-32).

Regarding claim 10. Leleu teaches using telephone service (col. 6 lines 36-40, co.. 15 lines 26-32).

### ***Response to Arguments***

3. Applicant's arguments filed 11/29/05 (PRE-APPEAL BRIEF REQUEST) have been fully considered but they are not persuasive.

a) Regarding Applicants remark on in section I wherein Applicants contend that the 112, first paragraph language has been removed.

The Examiner agrees and removes the 112 rejection.

b) Next, Applicants generally argue that this invention resolves the problems in the prior art by using an electronic credit that reserves the resources for the data communication at the terminal end (see section II, paper dated 11/29/05).

The Examiner notes that Applicants independent claims do not reflect this language. Instead, the telephone network (i.e. centralized) does the reserving not the terminal (i.e. decentralized). For example, see last three lines of claim 1 wherein reserving by the telephone network (i.e. centralized) is disclosed **not** reserving by the terminal (i.e. decentralized). The Examiner notes that the terminal sends the electronic credit to the telephone network (i.e. centralized) to be used for reserving transmission path but the terminal never uses the electronic credit at the terminal end because it is sent to the telephone network (i.e. centralized) to be used for reserving.

### ***Conclusion***

**4. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

**5.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry W. Taylor, telephone number (571) 272-7509, who is available Monday-Friday, 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz, can be reached at (571) 272-7499. The central facsimile phone number for this group is **571-273-8300**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 2600 receptionist whose telephone number is (571) 272-2600, the 2600 Customer Service telephone number is (571) 272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Application/Control Number: 10/038,857

Page 8

Art Unit: 2643

Building, 401 Dulany Street, Alexandria, VA 22314), and facsimile transmissions must be sent to the central fax number (571-273-8300).

A handwritten signature in black ink, appearing to read "Barry W. Taylor". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Barry W. Taylor  
Patent Examiner  
Technology Center 2600  
Art Unit 2643